IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1031 of 1996

in

SPECIAL CIVIL APPLICATIONNo 4230 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANUBHAI B MAKWANA

Versus

UNION OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 1031 of 1996

MR TR MISHRA for Appellant

MR MUKESH R SHAH for Respondent No. 1-2

MR KM PATEL for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 10/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The appellant challenges the order dated 25th June 1996 of the learned Single Judge, rejecting the petition which was filed against the order dated 28th February 1996 of the Government, rejecting the application of the appellant for making a reference.

2. It is contended on behalf of the appellant that the appellant had intermittently worked for nearly 2,500 days with the respondent No.3 bank. The bank, on the other contends, that he has not worked even for 240 days in a year, and that, his name was in the panel of persons who were to be appointed as badli workers.

3. The learned Single Judge, rejected the petition holding that the appellant did not lead any evidence before the conciliation officer, nor did he call upon the bank management to produce the relevant evidence, and that the appropriate authority had rightly come to the conclusion that the workman was still on the panel, and further that, it was not shown that he had completed 240 days of service in a year.

4. It appears from the record that, on 24th September 1994, a representation as per Anenxure "A" to the petition was made by the appellant contending that he was appointed in service of Dena Bank as sub-staff in the year 1985 and he continued to work upto July 1984 uninterruptedly. It was specifically contended that his services were arbitrarily and abruptly terminated without any written order and without giving any reasons with effect from 29-7-1994. According to him, he had worked for in all 2,500 days from November 1985 till July 1994. In paragraph 3 of that application, it was reiterated that right from 1986, he had been working for more than 240 days in each year. He rendered services in Sayajigunj Branch, Alkapuri Branch and Zonal Office of the bank as per the exigencies of work. According to him, while discontinuing his service, no notice or pay in lieu thereof had been given.

5. The bank contested the application by its reply dated 17th November 1994 before the Assistant Labour Commissioner denying the allegations made therein and contending that the appellant was never appointed by the

bank and further, that he had worked temporarily / intermittently only as a badli worker. It was denied that he had worked for more than 240 days each year from 1986. It however appears that the bank did not produce any record before the Labour Commissioner showing the exact number of days that he had worked. The register and / or relevant record being in custody of the bank, could have been easily produced them to show the actual number of days that the appellant worked. In the rejoinder filed by the appellant, he reiterated that he had worked for more than 240 days continuously every year from November 1985 to July 1994.

5.1 The failure report was submitted to the appropriate government and the appropriate government, by its order dated 28th June 1996, formed an opinion that the dispute was not fit for reference to the Industrial Tribunal for adjudication on the following grounds :

> "It is reported that the workman was engaged by the bank occasionally / intermittently as temporary budlee sepoy. It is further reported that the workman had not completed 240 days of continuous service in any of the years so as to be entitled to the benefits of Sections 25-B and 25-F of the ID Act, 1947. The management have, however, stated that the workman is on the Bank's approved panel for engaging budlee as well as for filling regular vacancies in accordance with the Bank's rules."

6. Section 10(1) of the Industrial Dispute Act, 1947 confers discretion on the appropriate government either to refer the dispute or not to refer it for industrial adjudication on the basis of its opinion as to whether it is expedient to do so or not. In dealing with an industrial dispute in respect of which a failure report has been submitted under Section 12(4), the appropriate government ultimately exercises its powers under Section 10(1) of the Act, subject to its obligation under Section 12(5) to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been submitted. As held by the Supreme Court in Bombay Union of Journalists v. The State of Bombay, reported in AIR 1964 SC 1617, if the dispute in question raises questions of law, the appropriate government should not purport to reach a final decision of such questions of law, because, that would normally lie within the jurisdiction of the Industrial Tribunal. It was further held:

"Similarly, on disputed questions of fact, the appropriate government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal." (See paragraph 6 of the judgement).

6.1 Thus, though the appropriate government is not precluded from considering, prima facie, existence of the disputes when it decides the question as to whether its power to make reference should be exercised under Section 10 read with Section 12(5) of the Act, it cannot purport to reach final conclusions in cases where there are disputed questions of fact.

6.2 In the present case, it is evident from the proceedings before the conciliation officer that there was an acute dispute about the period for which the workman had served. On one hand, the workman contended that he had worked for more than 2500 days, while on the other, the employer Dena Bank denied that assertion contending that he had not put in even 240 days of service in a year. This was not a case where the claim put up was patently frivolous. It was a case where the appellant was already on the badli panel and he had intermittently worked even according to the petitioner. Therefore, the bank had sufficient material to show the actual number of days the workman had put in during the entire period from November 1985 to July 1994. Therefore, there is no substance in the contention raised on behalf of the bank that the government was justified in holding that the workman had not put in 240 days of service in a year.

6.3 In fact, if we peruse the order of the government, it becomes clear that it has not formed any such opinion. In the order made under Section 10(1) of the said Act, it was only mentioned that it was reported by the employer that the workman had not completed 240 days of continuous service in all the years, and no opinion was formed on that aspect, despite claim of the workman that he had worked for 2500 days during the said period, nor any attempt was made by the appropriate government to apply its mind to the relevant record for the purpose of ascertaining the true facts, apart from the fact that such a controversial issue could not have been adjudicated upon by the Government in its function which was purely of an administrative nature.

6.4 The decisions cited on behalf of the bank in Prem Kakar v. State of Haryana, reported in AIR 1976 SC 1474, in Secretary, Indian Tea Association v. Ajit Kumar

Barat, reported in (2000)3 SCC 93 and Nedungadi Bank Ltd. v. K.P.Madhavankutty, reported in 2000 I CLR 671, cannot assist the respondent bank.

7. In the above view of the matter, since this is an instance of non-application of mind on the part of the appropriate government, nor are any reasons recorded, and there is a mere reference to the contention by the bank, it would be appropriate that the said government should re-consider the issue and take a fresh decision in the matter under Section 10(1) of the said Act, in accordance with law expeditiously, preferably within eight weeks from the date of receipt of the writ of this order.

8. The appeal is allowed. The impugned order of the learned Single Judge dated 25th June 1996 and the impugned order of the Central Government dated 28th February 1996 are hereby set aside. The respondent No.1 is directed to re-consider the matter as stated hereinabove and take an appropriate decision in accordance with law within the time indicated. There shall be no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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